



COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 15-2

June 18, 2015

Petition of the State 911 Department to Adjust the Enhanced 911 Surcharge

FINAL ORDER

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I. INTRODUCTION AND PROCEDURAL HISTORY

On March 20, 2015, the State 911 Department (“911 Department”) petitioned the Department of Telecommunications and Cable (“DTC”) for approval of the following: (1) adjustment of the Enhanced 911 (“E911”)¹ Surcharge for each subscriber or end user whose communication services are capable of accessing and utilizing an E911 system (“surcharge”) to \$1.25, effective July 1, 2015, with a reduction to \$1.00, effective July 1, 2016, to provide for expenses associated with 911 services; (2) an increase of 10% or more of its projected expenditures for Fiscal Year (“FY”) 2015; and (3) an increase of 10% or more of the Incentive Grant, regional emergency communication center (“RECC”) category allocation amount for FY2015.² *See* Petition of the State 911 Dep’t to Adjust the Enhanced 911 Surcharge at 1, 7 n.5,

¹ E911 services provide residents of the Commonwealth with the ability to reach emergency services by dialing the digits “9-1-1,” and are provisioned pursuant to G.L. c. 6A, §§ 18A–18J and G.L. c. 166, §§ 14A, 15E. E911 is distinguished from traditional 911 services in that E911 provides responders with both the telephone number used to place the 911 call and information detailing the geographic origin of the call. *See* G.L. c. 6A, § 18A.

² This request was implicit in the Petition as the 911 Department requested approval of its expenditures as contained in Exhibit B to the Petition, and was formally made as part of the 911 Department’s response to DTC Record Request 1-9. *See* Petition at Exh. B; D.T.C. RR 1-9. Because the request was contained in

Exh. B (“Petition”). The DTC has ninety days to review and issue a final decision on the Petition before these requests are deemed approved. *See* G.L. c. 6A, §§ 18B(i)(4), 18H(b), (c).

The Attorney General of the Commonwealth of Massachusetts intervened in this proceeding as of right on March 31, 2015. Att’y Gen.’s Notice of Intervention (Mar. 31, 2015); *see also* G.L. c. 12, § 11E. CTIA—The Wireless Association (“CTIA”) filed a Petition for Leave to Intervene on April 16, 2015, and Comcast Phone of Massachusetts, Inc. filed a Motion for Limited Participant status on April 23, 2015, each of which the DTC granted during the evidentiary hearing. Tr. at 9. The DTC issued its first set of Information Requests to the 911 Department on April 6, 2015. First Set of Info. Requests of the Dep’t of Telecomms. & Cable to the State 911 Dep’t (Apr. 6, 2015). The 911 Department filed its responses on April 21, 2015. Responses to First Set of Info. Requests of the Dep’t of Telecomms. & Cable to the State 911 Dep’t (Apr. 21, 2015).

Written comments were filed by the Massachusetts Executive Office of Public Safety and Security, the Massachusetts Office on Disability, the Massachusetts Commission for the Deaf and Hard of Hearing, the Office of the Sheriff of Barnstable County, the Massachusetts Major Cities Chiefs Association, the Massachusetts Municipal Association, the Massachusetts Chiefs of Police Association, the Fire Chiefs’ Association of Massachusetts, the Massachusetts Communications Supervisors Association, and CTIA. Letter from Daniel Bennett, Sec’y, Mass. Executive Office of Pub. Safety & Sec., to Sara Clark, Sec’y, DTC (Apr. 29, 2015) (“EOPSS Letter”); Letter from David D’Arcangelo, Dir., Mass. Office on Disability, to Sara Clark, Sec’y, DTC (Apr. 28, 2015) (“MOD Letter”); Letter from Heidi L. Reed, Comm’r, Mass. Comm’n for

the Petition, the DTC will treat the request as part of the Petition as filed on March 20, 2015. *See* Transcript of Evidentiary Hearing (“Tr.”) at 59-63.

the Deaf & Hard of Hearing, to Sara Clark, Sec'y, DTC (Apr. 28, 2015) ("CDHH Letter"); Letter from James Cummings, Sheriff, Office of the Sheriff of Barnstable County, to Sara Clark, Sec'y, DTC (Apr. 28, 2015) ("Barnstable Sheriff Letter"); Letter from Chief Brian A. Kyes, President, Mass. Major City Chiefs Assoc., to Sara Clark, Sec'y, DTC (Apr. 21, 2015) ("MCCA Letter"); Letter from Geoffrey C. Beckwith, Executive Dir. & CEO, Mass. Mun. Assoc., to Sara Clark, Sec'y, DTC (Apr. 29, 2015) ("MMA Letter"); Letter from Chief Douglas Mellis, President, Mass. Chiefs of Police Assoc., to Sara Clark, Sec'y, DTC (Apr. 21, 2015) ("MCPA Letter"); Letter from John J. Grant, President, Fire Chiefs Assoc. of Mass., to Sara Clark, Sec'y, DTC (Apr. 28, 2015) ("FCAM Letter"); Letter from Lee Ann Delp, President, Mass. Commc'ns Supervisors Assoc., to Sara Clark, Sec'y, DTC (Apr. 15, 2015) ("MCSA Letter"); Comments of CTIA (Apr. 29, 2015).

On May 1, 2015, the DTC conducted public and evidentiary hearings on these matters. *See generally* Tr. At the evidentiary hearing the DTC granted CTIA's Petition for Leave to Intervene and Comcast Phone of Massachusetts, Inc.'s Motion for Limited Participant status. Tr. at 9. On May 7, 2015, the 911 Department responded to thirteen Record Requests issued by the DTC and one Record Request issued by CTIA at the evidentiary hearing. Responses to Records Requests of the Dep't of Telecomms. & Cable to the State 911 Dep't (May 7, 2015). The 911 Department filed a Motion for Confidential Treatment of its response to DTC Record Request 1-12, which the DTC granted in an Interim Order on May 28, 2015. Interim Order at 3-5. Also in the Interim Order, the DTC established an interim surcharge of \$1.25 per month for effect on July 1, 2015, subject to adjustment pending the completion of the DTC's full investigation. *Id.* at 6.

In this Final Order, the DTC approves the 911 Department's projected FY2015 expenditures and the FY2015 Incentive Grant, RECC category allocation amount.³ As a result, the DTC also approves the 911 Department's requested adjustments to the surcharge for FY2016 and FY2017.⁴ Pending a 911 Department petition in the interim to further adjust the surcharge, or to affirm the reasonableness of a \$1.00 surcharge, the DTC plans to reassess under its statutory authority the \$1.00 surcharge approved herein during FY2018, after the Next Generation 911 system ("NG 911") is fully deployed and implemented.⁵ See G.L. c.6A, § 18H(b). Finally, the DTC offers further comment on the condition of the E911 Fund ("Fund").

II. ANALYSIS AND FINDINGS

The DTC approves the 911 Department's projected FY2015 expenditures, the 911 Department's projected FY2015 Incentive Grant, RECC category allocation amount, and the 911 Department's requested adjustments to the surcharge for FY2016 and FY2017 based on the following analysis and findings.

A. Standard of Review

When reviewing 911 Department petitions to increase expenditures or allocations or to adjust the surcharge, the DTC looks to whether the 911 Department's expenditures are, or will

³ The 911 Department also has requested that the DTC consider the Petition as satisfying, for FY2013, FY2014, and FY2015, the requirement under G.L. c. 6A, § 18H(b) that the 911 Department report annually on the financial condition of the E911 Fund to the DTC. Petition at 3 n.2; see CTIA Comments at 4-5 (noting that the 911 Department did not timely file such reports in FY2013 or FY2014). The DTC grants the 911 Department's request and finds in this instance that the Petition satisfies the requirements of G.L. c. 6A, § 18H(b). However, the DTC directs the 911 Department to comply with its statutory annual reporting obligation in a timely manner moving forward, beginning with FY2016.

⁴ As a result of the Interim Order, there will be no further adjustment to the surcharge for FY2016. See Interim Order at 11.

⁵ "Next Generation 911" is an E911 system that incorporates the handling of all 911 calls and messages, including those using IP-enabled services or other advanced communication technologies in the infrastructure of the 911 system itself. G.L. c. 6A, § 18A.

be, prudently incurred. *See Petition of the State 911 Dep't for Approval of the Fiscal Year 2011 Dev. Grant Amount, & Fiscal Year 2010 Expenditures*, D.T.C. 10-1, *Order* at 5-6 (Apr. 5, 2010) (“10-1 Order”) (approving an increase in the FY2011 Development Grant Allocation under G.L. c. 6A, § 18B(i)(5)). When examining whether an expense is, or will be, prudently incurred, the DTC assesses whether circumstances, at the time the decision was made, adequately justified the reasonableness of the expense. *See Petition of the Statewide Emergency Telecomms. Bd. to establish a wireline surcharge, for the period Jan. 1, 2008 to June 30, 2008, to recover prudently incurred costs associated with the provision of wireline Enhanced 911 servs., relay servs. for TDD/TTY users, commc'ns equip. distribution for people with disabilities, & amplified handsets at pay tels.*, D.T.C. 07-7, *Order* at 7, 9, 19 (Feb. 8, 2008) (“07-7 Order”). The DTC will not simply substitute its own judgment for that of the 911 Department as to what is reasonably required to perform the 911 Department’s statutory obligations, and the 911 Department has the authority to determine which categories of equipment, training, and support expenditures it will submit to the DTC for approval. *See Investigation by the Dep't of Telecomms. & Energy to establish a surcharge to recover prudently incurred costs associated with the provision of wireline enhanced 911 servs., relay servs. for TDD/TTY users, commc'ns equip. distribution for people with disabilities, & amplified handsets at pay tels.*, D.T.E. 03-63-Phase I, *Order* at 16 (July 14, 2003) (finding that while the State Emergency Telecommunications Board (“SETB”)⁶ must “support the reasonableness of its proposed expenditures, the [Department of Telecommunications and Energy (“DTE”)]⁷ lacks the jurisdiction to tell the SETB what

⁶ The SETB was the predecessor agency to the 911 Department, and was dissolved on February 1, 2009. *See* 2008 Mass. Acts, c. 223.

⁷ The DTE, the DTC’s predecessor agency, was dissolved on April 11, 2007. *See* 2007 Mass. Acts, c. 19.

categories of expenditure it is required to propose”). However, even though the 911 Department may make a determination that a certain expense is needed, the DTC has held that all expenses must still be prudently incurred. *See 07-7 Order* at 8. Expenses are deemed prudent if they are necessary for the funding of the 911 Department’s provision of E911 services and programs, including disability access programs in the Commonwealth and, at the same time, maintain a stable surcharge level. *See 07-7 Order* at 9; *Petition of the Statewide Emergency Telecomms. Bd. to establish a wireline surcharge, for the period Jan. 1, 2008 to June 30, 2008, to recover prudently incurred costs associated with the provision of wireline Enhanced 911 servs., relay servs. for TDD/TTY users, commc’ns equip. distribution for people with disabilities, & amplified handsets at pay tels.*, D.T.C. 07-7, *Interim Order* at 7 (Nov. 30, 2007); *Investigation by the Dep’t of Telecomms. & Energy to establish a permanent surcharge to recover prudently incurred costs associated with the provision of wireline Enhanced 911 servs., relay servs. for TDD/TTY users, commc’ns equip. distribution for people with disabilities, & amplified handsets at pay tels.*, D.T.E. 06-4, *Order* at 27-28, 35 (Dec. 1, 2006).

Given the potentially competing interests of ensuring modern, robust E911 services and maintaining a stable surcharge, the DTC has stated that the 911 Department has the authority to determine what is necessary for the provisioning of E911 service, but that the necessity must be viewed in relation to cost. *See 10-1 Order* at 8; *07-7 Order* at 7. Accordingly, the DTC’s mandate is to maintain a reasonable, stable surcharge in order to protect the interests of communications service ratepayers “and to serve as a counterweight to the 911 Department’s authority.” *See Petition of the State 911 Dep’t for Approval of Fiscal Year 2012 Incentive Grant Reg’l Emergency Commc’ns Ctr. Category Amount; State 911 Dep’t Emergency Med. Dispatch*

Grant; & Fiscal Year 2011 Expenditures, D.T.C. 11-2, *Order* at 4-5 (May 27, 2011) (“11-2 *Order*”). The DTC thus must oversee the costs of provisioning 911 services, but that oversight is limited to determining whether the 911 Department’s expenses are prudently incurred. *See id.* If the DTC determines that the 911 Department’s expenses associated with the provisioning of E911 services and programs, including disability access programs are, or will be, prudently incurred, the DTC has the responsibility to establish a surcharge that will fund such expenses. *See* G.L. c. 6A, § 18H(b).

B. Analysis of State 911 Department Projected Revenues

Fund revenues are generated primarily from the surcharge, which is “imposed on each subscriber or end user whose communication services are capable of accessing and utilizing an enhanced 911 system.” G.L. c. 6A, § 18H(a); Petition at 9. The Fund’s projected annual surcharge revenue is derived by multiplying the average number of monthly subscribers by the surcharge to produce the projected monthly surcharge revenue.⁸ Petition at 8-9. This averaged monthly revenue is then reduced by 1% to account for a carrier administrative fee and 2% to account for uncollectible revenue. *Id.* at 9. The adjusted monthly revenue is then multiplied by twelve to get the annual projected surcharge revenue for each fiscal year. The 911 Department projects surcharge revenues of \$72,373,603 in FY2015, \$116,601,916 in FY2016, and 98,508,515 in FY2017. *Id.* at Exh. B. The increase and subsequent decrease in surcharge revenue are due to the 911 Department’s proposed surcharge adjustments. *See id.* at 1. For FY2015, the projected total fund revenue also includes earned interest—based on an estimate

⁸ The 911 Department tracks subscriber count by type of service provider on a monthly basis. *See* Petition at 8. This subscriber count is averaged to determine the overall number of subscribers per month per carrier type. *Id.*

0.19% interest rate—from the portion of the Fund that the 911 Department invests.⁹ *Id.* at 9, Exh. B. The DTC is satisfied with the 911 Department’s tracking of subscriber counts at this time and believes that this is a reasonable method of calculating the 911 Department’s projected revenue for FY2015 through FY2017. The DTC notes, however, that in a rapidly evolving communication services market, a static projected subscriber count has limited utility in the latter years of a five year projection. *See* Tr. at 44-45; CTIA RR 1-1; *infra* p. 36.

Moreover, the DTC believes it may be possible for the 911 Department to further maximize its full revenue potential. *See* G.L. c. 6A, § 18H(d). Specifically, as the DTC indicated, there may be a discrepancy between the average number of subscribers that communication service providers report to the 911 Department by way of the Monthly Surcharge Report and the number of subscribers as determined by the Federal Communications Commission (“FCC”). *See* Tr. at 50-53; D.T.C. RR 1-8 (comparing the surcharge remittance requirements with the FCC’s Local Competition Report and FCC Form 477 instructions). The DTC encourages the 911 Department to enhance, to the extent practicable,¹⁰ its efforts to ensure that all communication service providers are collecting and remitting the surcharge established herein. *See* G.L. c. 6A, § 18H(a), (d); *11-2 Order* at 17 (describing efforts of the 911 Department in 2010 to ensure that prepaid wireless carriers comply with the surcharge

⁹ The Fund is managed by the State Treasurer. *See* G.L. c. 29, § 23 (charging the state treasurer with managing “all cash, funds, or investments under the control or jurisdiction of any state agency”). The Office of the State Treasurer reports the average interest rate for the Massachusetts Municipal Depository Trust for 2014 at 0.19%. *See* Petition at 9. Therefore, the DTC finds that 0.19% is a reasonable assumption for purposes of projecting interest earned on the invested funds for FY2015.

¹⁰ The DTC acknowledges the 911 Department’s assertion that it does not have statutory enforcement authority with respect to remittance of the surcharge. *See* Tr. at 21.

remittance requirements); Tr. at 115-18. The DTC is committed to working with the 911 Department to accomplish this goal.¹¹

Accordingly, the DTC finds that the 911 Department's revenue projections for FY2015 through FY2017 are reasonable. *See* G.L. c. 6A, § 18H(b).

C. Analysis of State 911 Department Projected Expenditures

The 911 Department requests DTC approval of projected expenditures of \$143,734,031 for FY2015. *See* Petition at 7 n.5, Exh. A. As part of this request, the 911 Department seeks specific approval of its proposal to increase the FY2015 Incentive Grant, RECC category allocation amount from 4% of surcharge revenues from the previous fiscal year to 4.7% of surcharge revenues. *See id.* at Exh. B; D.T.C. RR 1-9. Finally, given its requested surcharge adjustment for FY2017, the 911 Department implicitly seeks approval of its projected expenditures of \$118,336,402 in FY2016 and \$92,214,025 in FY2017. The DTC addresses each request in turn.

1. State 911 Department Projected FY2015 Expenditures

As actual reported expenditures for FY2014 were \$71,592,210, the 911 Department's projected FY2015 expenditures represent an increase of 101% from the previous fiscal year. *See* Petition at Exh. A. The 911 Department is required to seek approval for projected total expenditures that exceed the total expenditures of the previous year by 10% or more. G.L. c. 6A, § 18H(c). As discussed above, the DTC reviews the reasonableness of such requests by inquiring into whether these expenses are, or will be, prudently incurred. *See supra* pp. 4-7. The 911 Department's projected expenses for FY2015 are broken down into four major cost

¹¹ Similarly, the DTC believes that amending the Monthly Surcharge Report Form may be useful for accomplishing this goal. The DTC is willing to work with the 911 Department on any such amendments.

categories: (a) Administration; (b) Programs; (c) E911; and (d) Disability Access Programs. *See* Petition at Exh. B. The DTC analyzes the prudence of the projected expenditures in each cost category below and determines that the 911 Department's projected FY2015 expenditures are necessary to the provisioning of E911 services and programs, including disability access programs, and are, or will be, prudently incurred.

a. Administration

The 911 Department's projected FY2015 administration expenses of \$7,586,985 are, or will be, prudently incurred. *See id.* The 911 Department's administration expenses in FY2015 include salary costs and agency expenses.¹² *See id.*

The 911 Department's FY2015 salary costs are projected at \$5,165,972, compared to the FY2014 actual salary costs of \$3,526,764. *See id.* The 911 Department explains that the increase in salary costs is attributable to the hiring of ten full-time employees and three contract position hires. *Id.* at 9. Specifically, the 911 Department has hired, or plans to hire: a human resources director to ensure that the 911 Department is sufficiently staffed to meet its statutory obligations; a fiscal manager and two accountants to provide financial support that will enable the 911 Department to continue to meet its statutory obligations to administer its grant programs; an operations manager and three systems analysts to assist with the technical and operational aspects of E911, including the implementation of NG 911; a programs manager and a trainer to assist with the increased training and certification requirements of 911 telecommunicators; and three contract-based trainers to support training efforts associated with NG 911. *See id.* at 9-10, Exh. A; D.T.C. IR 1-2. The 911 Department states that each hire is necessary to fulfill its increased statutory

¹² The 911 Department does not project capital project expenditures in FY2015. *See* Petition at Exh. A.

obligations resulting from the enabling legislation passed in 2008. *See* D.T.C. IR 1-2. In addition, the projections for salary expenses reflect contractual step increases and cost of living requirements negotiated by the National Association of Government Employees (“NAGE”) and the Commonwealth. Petition at 9-10.

The DTC acknowledges the increased responsibilities that the 911 Department’s enabling legislation placed on the agency, and finds that the projected increase in salary expenses is due to the 911 Department’s fulfillment of its increased statutory responsibilities and contractual employment obligations arising from those responsibilities. *See* 2008 Mass. Acts, c. 223. The projected FY2015 salary expenses are necessary to the provisioning of E911 services and programs, including disability access programs, and therefore are, or will be, prudently incurred.

Agency expenses, the second item within the administration category, is comprised of:

(1) Employee Reimbursements; (2) Workers Comp; (3) Administrative Expenses; (4) Operational Supplies; (5) Utilities/Space Rental; (6) Consultant Services; (7) Operational Services; (8) Equipment Purchases; (9) Lease, Maintenance, Repair Services; (10) Building Maintenance, Repairs; and (11) IT Services, Equipment. *See* Petition at Exh. B. The projected total agency expenses for FY2015 are \$2,421,013, a 51% increase from the 911 Department’s FY2014 agency expenditures of \$1,600,676. *See id.* The biggest drivers of the projected increase in FY2015 agency expenses are Consultant Services, Operational Services, IT Services/Equipment, and Administrative Expenses. *See id.* at Exh. A. The 911 Department states that these increased costs are associated with the deployment and implementation of NG 911, as follows: First, the projected increase in Consultant Services is due to the hiring of an additional project manager to support NG 911. *Id.* at 11. Second, the projected increase in

Operational Services is due to the hiring of temporary staff that are, or will be, primarily involved in the deployment of NG 911. *Id.*; D.T.C. IR 1-4; Tr. at 53-54. As these expenses are for temporary staff, the 911 Department predicts that the expenses may decrease after NG 911 is deployed. Tr. at 54. Similarly, the projected increase in IT Services/Equipment is due primarily to staff augmentation related the implementation of NG 911. *See* Petition at 11; D.T.C. IR 1-6; D.T.C. RR 1-10. The 911 Department predicts that these expenses also may decrease after NG 911 is deployed. Petition at 11; D.T.C. IR 1-6. And finally, the 911 Department states that the projected increase in Administrative Expenses is due to indirect costs associated with the aforementioned temporary employees and IT staff augmentation. Petition at 10.

Because the projected increase in FY2015 agency expenses is attributable to temporary costs which are necessary to meet the 911 Department's statutory goal of implementing NG 911, the DTC finds that these expenses are, or will be, prudently incurred. *See* G.L. c. 6A, § 18B(h); *infra* Section II.E (discussing the effect of the deployment of NG 911 on the Fund).

b. Programs

Massachusetts law requires the 911 Department to administer several programs related to the provision of E911 services, including its training, public education, and grant programs. *See* G.L. c. 6A, § 18B(f), (i). In addition, the 911 Department operates a designated wireless center within the Essex RECC ("Essex Wireless Center"). *See* Petition at 16-17. The 911 Department's projected program expenditures in FY2015 of \$59,501,518 include costs in these four categories. *See id.* at 11, Exh. B. This represents a significant increase in program expenses from FY2014, and this increase is due primarily to the grant programs and the Essex Wireless Center. *See id.* at Exh. A. The only projected increase requiring independent review is the increase for the Incentive Grant,

RECC category. *See* G.L. c. 6A, § 18B(i) (establishing a threshold for each grant and requiring DTC approval if the projected expenditures for a grant exceeds the established threshold). The DTC determines that the 911 Department's projected program expenses for FY2015 are, or will be, prudently incurred. The DTC specifically determines that the requested increase in the FY2015 Incentive Grant, RECC category allocation amount is a prudently incurred expense, and accordingly approves the increase.

Beginning with the training program, the 911 Department projects FY2015 expenditures to decrease to \$500,000 from \$538,941. *See* Petition at Exh. A. As this program is required by statute and the projected costs represent a decrease in spending from previous years, the DTC finds that these expenses are, or will be, prudently incurred. *See* G.L. c. 6A, § 18B(f); Petition at Exh. A. In terms of public education, while the 911 Department's FY2015 expenditures of \$200,000 represent an increase from previous years, the 911 Department is required by statute to educate "consumers regarding the operation, limitation, role and responsible use of [E911] service." G.L. c. 6A, § 18B(f); *see* Petition at Exh. A. Given the implementation of NG 911 and the accompanying changes to the operation of E911 service, the DTC finds that an increase—at least temporarily—in public education expenses is reasonable and prudent. The DTC approves these projected expenditures.

Turning to the 911 Department's grant programs and beginning with the PSAP and RECC Training Grant ("Training Grant"), the DTC notes that although there is an increase in projected Training Grant funding in FY2015, the projected expense is still within the statutorily prescribed allocation. *See* G.L. c. 6A, § 18B(i)(1). The legislation set the initial allocation of the Training Grant to 5% of the total surcharge revenues of the previous fiscal year. *Id.* The State 911

Commission has the authority to increase that allocation, but the 911 Department must seek DTC approval if such increase brings the allocation to a level of 7.5% or more. *Id.* The 911 Department's projected allocation for the Training Grant in FY2015 is 6.5%, which is less than the 7.5% that would require independent DTC approval.¹³ *See id.*; Petition at Exh. A, Exh. B. Accordingly, the DTC determines that the projected Training Grant expenditures, which are required by statute and are within the range provide by statute, are, or will be, prudently incurred. *See* G.L. c. 6A, § 18B(i)(1).

Similarly, the 911 Department projects a significant increase in expenses for the emergency medical dispatch ("EMD")/Regulatory Compliance Grant ("EMD Grant"). *See* Petition at Exh. A. The DTC approved the establishment of the EMD Grant with an initial allocation of 3% of the total surcharge revenues for the previous fiscal year. *11-2 Order* at 8-12. And like the Training Grant, while there is a significant increase in projected EMD Grant funding in FY2015, the projected expenses represent 2.8% of the total surcharge revenues from the previous fiscal year, well below the initially prescribed allocation. *See* Petition at Exh. A; *11-2 Order* at 12. Consistent with its findings in the *11-2 Order*, the DTC determines that the projected FY2015 funding for the EMD Grant is necessary for the 911 Department to meet its statutory obligations regarding EMD. *See* G.L. c. 6A, § 18B(g); *11-2 Order* at 8-12. Accordingly, the DTC finds that the projected EMD Grant expenditures are, or will be, prudently incurred.¹⁴

¹³ The DTC notes that a primary reason for the significant projected increase in FY2015 Training Grant expenses is that the actual FY2014 Training Grant allocation was 2.3%, significantly lower than the initial allocation prescribed by statute. *See* G.L. c. 6A, § 18B(i)(1); Petition at Exh. A.

¹⁴ The DTC continues to believe that, consistent with the 911 Department's statutory framework, an appropriate funding level should ultimately be established for the EMD Grant. *See* G.L. c. 6A, § 18B(i); *11-2 Order* at 12.

The 911 Department projects FY2015 expenditures of \$19,340,074 for the PSAP and RECC Support Grant ("Support Grant"). *See* Petition at Exh. B. The projected expenses represent 25.9% of the total surcharge revenues of the previous fiscal year. *See id.* at Exh. A, Exh. B. The legislation set the initial allocation of the Support Grant to 25%. G.L. c. 6A, § 18B(i)(2). The State 911 Commission has the authority to increase that allocation, but the 911 Department must seek DTC approval if such increase brings the allocation to a level of 31.25% or more. *Id.* The 911 Department's projected 25.9% allocation for the Support Grant in FY2015 is less than the 31.25% threshold that would require independent DTC approval. *See id.*; Petition at Exh. A, Exh. B. Accordingly, the DTC determines that the projected Support Grant expenditures, which are required by statute and are within the range provide by statute, are, or will be, prudently incurred. *See* G.L. c. 6A, § 18B(i)(2).

The 911 Department projects FY2015 expenditures of \$3,933,000 for the Wireless State Police PSAP Grant. *See* Petition at Exh. B. The projected expenses represent 5.3% of the total surcharge revenues of the previous fiscal year. *See id.* at Exh. A, Exh. B. The legislation set the initial allocation of the Wireless State Police PSAP Grant to 4%. G.L. c. 6A, § 18B(i)(3). The State 911 Commission has the authority to increase that allocation, but the 911 Department must seek DTC approval if such increase brings the allocation to a level of 6% or more. *Id.* The 911 Department's projected 5.3% allocation for the Wireless State Police PSAP Grant in FY2015 is less than the 6% threshold that would require independent DTC approval. *See id.*; Petition at Exh. A, Exh. B. Accordingly, the DTC determines that the projected Wireless State Police PSAP Grant expenditures, which are required by statute and are within the range provide by statute, are, or will be, prudently incurred. *See* G.L. c. 6A, § 18B(i)(3).

The 911 Department projects FY2015 expenditures of \$5,283,878 for the PSAP and RECC Incentive Grant ("Incentive Grant"), broken down as follows: \$448,063 for regional PSAPs serving two municipalities; \$702,500 for regional PSAPs serving three to nine municipalities; \$587,344 for regional PSAPs serving ten or more municipalities; and \$3,545,971 for RECCs. *See* Petition at Exh. B. The legislation set a different initial allocation for each category within the Incentive Grant. G.L. c. 6A, § 18B(i)(4). Specifically: (i) for regional PSAPs serving two municipalities, the initial allocation was 0.5% of the total surcharge revenues of the previous fiscal year; (ii) for regional PSAPs serving three to nine municipalities, the initial allocation was 1% of the total surcharge revenues of the previous fiscal year; (iii) for regional PSAPs serving ten or more municipalities, the initial allocation was 1.5% of the total surcharge revenues of the previous fiscal year; and (iv) for RECCs, the initial allocation was 2% of the total surcharge revenues of the previous fiscal year. *Id.* The State 911 Commission has the authority to adjust those individual allocations, but the 911 Department must seek DTC approval if any such adjustment increases the initial total allocation of the Incentive Grant (i.e., categories (i) through (iv), total) by 10% or more. *Id.* For categories (i), (ii), and (iii), the 911 Department's projected expenses represent 0.6%, 0.9%, and 0.8%, respectively, of the total surcharge revenues of the previous fiscal year. *See* Petition at Exh. A, Exh. B. Each of these allocations is less than the statutorily established threshold that would require independent approval. *See* G.L. c. 6A, § 18B(i)(4). Accordingly, the DTC determines that the projected FY2015 Incentive Grant expenditures for regional PSAPs serving municipalities, which are required by statute and are within the range provide by statute, are, or will be, prudently incurred. *See* G.L. c. 6A, § 18B(i)(4).

However, turning specifically to the Incentive Grant, RECC category, the 911 Department's projected expenses represent 4.7% of the total surcharge revenues of the previous fiscal year. *See* Petition at Exh. A, Exh. B. The 911 Department thus requests to increase the category's allocation amount from 4% to 4.7% of surcharge revenues from the previous fiscal year. *See id.* at Exh. B; D.T.C. RR 1-9. Statute established the Incentive Grant to "provide regional PSAPs and [RECCs] with funds in addition to amounts allocated as part of the [Support Grant]" for reimbursement of allowable expenses, as specified in the Support Grant.¹⁵ G.L. c. 6A, § 18B(i)(4). These grants were established to foster the development of regional PSAPs and RECCs. *Id.* § 18B(i). The funding for the RECC category of the Incentive Grant was initially set at 2% of the total surcharge revenues from the previous fiscal year. *Id.* § 18B(i)(4)(iv). The State 911 Commission may adjust this percentage "to ensure a proper allocation of incentive funds as more regional PSAPs and [RECCs] are added."¹⁶ *Id.* § 18B(i)(4). However, "adjustments that increase the initial total allocation of the incentive grant by [10%] or more shall be approved by the [DTC], upon the petition of the [911 Department]."¹⁷ *Id.* As the 911 Department's proposed adjustment in the FY2015 Incentive Grant, RECC category allocation amount will result in an increase of over 10% in the initial total Incentive

¹⁵ PSAP and RECC Support Grant funds are "disbursed according to a formula that weighs both population served and 911 call volume." G.L. c. 6A, § 18B(i)(2). This grant reimburses: "primary, regional and regional secondary PSAPs and [RECCs] for allowable expenses related to enhanced 911 telecommunicator personnel costs, and the acquisition and maintenance of heat, ventilation and air-conditioning equipment and other environmental control equipment, computer-aided dispatch systems, console furniture, dispatcher chairs, radio consoles, and fire alarm receipt and alert equipment associated with providing enhanced 911 service; regional PSAPs and [RECCs] for allowable expenses related to the acquisition and maintenance of public safety radio systems; regional secondary PSAPs for allowable expenses related to PSAP customer premises equipment maintenance; and primary, regional, and regional secondary PSAPs and [RECCs] for any other equipment and related maintenance associated with providing enhanced 911 service as approved by the [911 Department]." *Id.*

¹⁶ The State 911 Commission voted to adjust the FY2015 Incentive Grant, RECC category to 4.7% of the total surcharge revenues for the previous fiscal year. D.T.C. RR 1-9.

¹⁷ The DTC previously approved an increase of this allocation from 2% to 4%. *11-2 Order* at 5-7.

Grant allocation, the 911 Department must seek DTC approval of this adjustment. *See id.*; D.T.C. RR 1-9.

The 911 Department states that this adjustment will allow the 911 Department “to meet its statutory obligations to maximize effective enhanced 911 services and regional interoperability” and will further the 911 Department’s goals of “increased regionalization which will, in turn, lead to a more efficient and effective use of resources and improve public safety.” D.T.C. RR 1-9; *see also* Petition at 15-16; FCAM Letter; MCSA Letter. To date, 19 of 249 PSAPs in the Commonwealth have regionalized. Petition at 17; Tr. at 84. Throughout the evidentiary hearing, the 911 Department reiterated both the importance and the intensification of its regionalization efforts. *See* Tr. at 48, 67, 83-84, 105. Indeed, the 911 Department foresaw the need for this increase when the DTC last approved an adjustment to the Incentive Grant, RECC category. *See 11-2 Order* at 7 (“The 911 Department further explains that ‘[m]ost, if not all of such regionalization projects, if completed, would become RECCs,’ and therefore ‘this is the category that the [911] Department, with State 911 Commission and DTC approval, will need to adjust as new RECCs are added.’”). This expectation is consistent with the statute, which anticipates the need for increased funding as the 911 Department works toward realizing its statutory goal of fostering RECCs. *See* G.L. c. 6A, § 18B(i)(4).

The DTC determines that an increase in the FY2015 Incentive Grant, RECC category amount to 4.7% of the total surcharge revenues of the previous fiscal year is, or will be, a prudently incurred expense. Specifically, the DTC finds that given the goal of increased regionalization, the requested increase is necessary not only to maintain support for existing RECCs, but also to ensure that sufficient funding is available for additional RECCs in FY2015. *See id.* The DTC notes that

while the 911 Department requested an increase for the Incentive Grant, RECC category allocation in FY2015, the allocation is projected to decrease back to below 4% beginning in FY2017. *See* Petition at Exh. B. The 911 Department then projects to maintain the funding level of the Incentive Grant, RECC category in FY2017 by adjusting the allocation amounts, but keeping them below 4%. *See id.* These projected adjustments are further evidence of the 911 Department's stated commitment to ensuring surcharge stability moving forward. *See, e.g.,* Tr. at 106-07.

The final grant program is the Development Grant, for which the 911 Department projects FY2015 expenditures of \$8,000,000. *See* Petition at Exh. B. The 911 Department also carries \$12,513,529 in rollover Development Grant expenses. *Id.* The 911 Department states that the Development Grant has been funded at \$8,000,000 for the past four fiscal years. *Id.* at 17. The legislation states that DTC approval is required for any adjustments that increase the initial funding allocated to the Development Grant by 10% or more. G.L. c. 6A, § 18B(i)(5). Because the 911 Department is not proposing an adjustment to the Development Grant allocation, independent DTC approval of these projected expenditures is not required. *See id.* The DTC determines that the projected Development Grant expenditures, which are required by statute and are within the range provide by statute, are prudently incurred. *See id.* The DTC notes, however, that the 911 Department projects significant Development Grant rollover in FY2015 and that the 911 Department has disbursed a total of \$35,355,566.12 since the Development Grant's inception, an average of well under \$8,000,000 per year. *See* Petition at Exh. B.; Tr. at 55; D.T.C. RR 1-11. The DTC acknowledges that projects receiving Development Grant funding often span multiple fiscal years, that expenses are recorded in the fiscal year in which they are incurred, and that State 911 Commission members have advocated for increased Development Grant funding in future years.

See Petition at 17; D.T.C. IR 1-8; Tr. at 91-92. Given the 911 Department's historical Development Grant spending, the DTC encourages the 911 Department to closely monitor the Development Grant allocation amount moving forward.

The final category within the 911 Department's projected program expenses is for the Essex Wireless Center. *See* Petition at 16-17, Exh. A. The Essex Wireless Center was created to alleviate pressure from the State Police PSAPs by fielding and routing wireless 911 calls for its region, directly. *Id.* at 16-17; Tr. at 76. The 911 Department states that the Framingham State Police PSAP was reaching capacity and a new wireless center was needed to effectively provision E911 service. *See* Tr. at 76. The Essex Wireless Center commenced operations in October 2013. *Id.* at 74-75. The 911 Department projects FY2015 Essex Wireless Center expenditures to be \$2,831,037, a significant increase over FY2014. *See* Petition at Exh. A. This increase, however, is due to the fact that the Essex Wireless Center was not operational for all of FY2014 as it commenced operations during Q2 of FY2014. *See* Tr. at 80-81. Accordingly, the projected increase in funding is reasonable. Moreover, the DTC determines that since the Framingham State Police PSAP was reaching capacity, the projected expenditures funding the Essex Wireless Center are necessary for the provisioning of E911 service and thus, prudently incurred.

c. Enhanced 911

The third category of projected expenses in FY2015 is E911 expenses, which the 911 Department projects to be \$72,645,528. *See* Petition at Exh. A. E911 expenses are projected to be the largest reason for the overall increase in FY2015 911 Department spending, and consist primarily of E911 Support, Map Data, and NG 911 project expenses. *See id.*; Tr. at 95, 102. As

discussed below, the DTC determines the 911 Department's projected E911 expenses for FY2015 are, or will be, prudently incurred.

The first item within the E911 category of expenses is E911 Support. For FY2015, the 911 Department projects \$26,452,110 in E911 Support expenses, a decrease of approximately 14% from FY2014. *See* Petition at Exh. A. The 911 Department states that these expenses will continue to decrease as the deployment of NG 911 is finalized. *Id.* at 20. The projected amount for FY2015 is based on a contract between the 911 Department and Verizon for network, database, customer premises equipment, and maintenance services. *See id.* at 20, 22. Because the E911 Support expenses do not contribute to the projected increase in spending, and are contractual and necessary to fulfill the 911 Department's statutory obligations in provisioning E911 services and programs, including disability access programs, the DTC determines that they are, or will be, prudently incurred.

The second major item within the E911 category of expenses is Map Data. *See id.* at Exh. A. The 911 Department has an interdepartmental service agreement with the Massachusetts Office of Geographic Information ("MassGIS") in which MassGIS provides updated, synchronized mapping data and information to the 911 Department for use by the PSAPs. *See id.* at 21; Barnstable Sheriff Letter. The 911 Department projects \$2,870,819 in Map Data expenses in FY2015, an increase of approximately 73% over the \$1,662,878 spent on Map Data in FY2014. *See id.* at Exh. A. The 911 Department explains that this increased expense reflects a ramped up effort to support the 911 Department as it prepares for the implementation of NG 911. *See id.* at 21. Specifically, MassGIS is in the process of updating and improving its street database, and updating its parcel data to allow for more accurate representations of emergency

service zones, which are used to efficiently and accurately route 911 calls to the correct PSAPs. *Id.* In addition, the 911 Department has retained MassGIS to assist in its statutory mandate to review and improve the efficiency of wireless 911 call routing statewide. *Id.* at 22 (quoting G.L. c. 6A, § 18B(h)). The DTC finds that these updates and improvements are necessary to reap the full benefits of NG 911. The projected Map Data expenses therefore are, or will be, prudently incurred.

The final major item within the E911 category of expenses is the NG 911 project and related costs. *See id.* at Exh. A. NG 911 is the major driver behind the projected increase in E911 spending, and, indeed, the 911 Department's FY2015 projected expenditures overall. *See id.*; Tr. at 97. The 911 Department projects \$34,873,151 of non-recurring NG 911 expenditures and \$7,989,397 of recurring NG 911 expenditures in FY2015. Petition at Exh. B. The 911 Department also projects \$100,000 of expenditures in FY2015 for an NG 911 consultant. *Id.* at Exh. A.

The 911 Department is required to "review and assess new communications technologies that may include, but are not limited to, wireless, video, broadband, and IP-based applications that may serve as the next generation 911 technology platforms, consistent with FCC decisions and federal law." G.L. c. 6A, § 18B(h). As the current, analog-based E911 system—developed in the 1960s—has been reaching the end of its useful life, the 911 Department determined, in accordance with this statute and in consultation with outside consultants and other agencies, that technological advancements have dictated the need for NG 911 to completely replace the current E911 system. *See* Petition at 17-18; FCAM Letter. This determination, and the implementation of the replacement system, which has begun in earnest, fulfills the 911 Department's statutory

mandate and stands to benefit all residents and visitors of the Commonwealth. *See* G.L. c. 6A, § 18B(h); Petition at 18; EOPSS Letter. The 911 Department began this process in 2009, and in August 2014, after issuing a Request for Response (“RFR”) and undergoing a detailed evaluation process, entered into a five year contract with General Dynamics Information Technology (“GDIT”) for NG 911 products and services. *Id.* at 19-20. Once fully deployed by the end of FY2016, NG 911 will be a more efficient and effective 911 system than its predecessor, offering for the first time capabilities such as text-to-911 and picture and video messaging. *E.g., id.* at 18; EOPSS Letter; MOD Letter; CDHH Letter.

NG 911 is now in the implementation phase, and the projected non-recurring and recurring NG 911 costs are based on the 911 Department’s contract with GDIT. *Id.* at 22. And as the DTC noted in the Interim Order, the 911 Department must maintain its current, analog 911 system while rolling out and beginning to maintain NG 911. Interim Order at 8; *see also* Petition at 17-18, 24; Tr. at 97. While a costly undertaking, it is also one that is necessary for the 911 Department to meet its statutory obligations, and to maintain public safety and the provision of E911 services while doing so. *See* G.L. c. 6A, § 18B(h); MCCA Letter; MMA Letter. As the contract with GDIT was signed in August 2014, FY2015 is the first fiscal year in which the GDIT contract costs arise, which is the reason for the significant increase in NG 911 costs from FY2014 to FY2015. *See* Petition at 22, Exh. A; Tr. at 97. It is also worth noting that the projected non-recurring NG 911 costs decrease significantly in FY2016 and beyond because construction and initial deployment of NG 911 will be complete. *See* Petition at Exh. B; Tr. at 97.

Consequently, the DTC finds that the 911 Department's projected FY2015 non-recurring and recurring NG 911 costs are contractual and are necessary to achieve the 911 Department's statutorily mandated goal of establishing NG 911. The DTC finds that the projected FY2015 expenses related to NG 911 are, or will be, prudently incurred.

d. Disability Access Programs

The final category of projected E911 expenses is for the Disability Access Programs, which include Telecommunications Relay Service ("TRS"), Captioned Telephone Service ("CapTel"), and Specialized Customer Premises Equipment ("SCPE").¹⁸ See Petition at Exh. A. The 911 Department is required to administer TRS and CapTel and provide for the distribution of SCPE in the Commonwealth. Petition at 23; CDHH Letter; *see also* G.L. c. 6A, §§ 18B(m), 18H(d); G.L. c. 166, § 15E. Pursuant to G.L. c. 166, § 15E, local exchange carriers must provide relay services and specialized equipment distribution programs for disabled persons. G.L. c. 166, § 15E. Prudently incurred expenses associated with the provision of disability access programs are recovered through the surcharge. G.L. c. 6A, § 18H(a). The DTC finds that the 911 Department's projected FY2015 expenses associated with these programs are, or will be, prudently incurred.

TRS and CapTel are provided in the Commonwealth via a contractor whose bid was accepted by the 911 Department pursuant to an RFR previously approved by the DTC. See

¹⁸ TRS provides individuals with hearing or speech impairments the ability to communicate using voice over wire or radio, in a manner functionally equivalent to a person without such impairments. G.L. c. 166, § 15E. CapTel allows persons with a hearing disability, but who retain some residual hearing, to read captions of what a caller is saying while simultaneously listening to that caller. *Id.* SCPE includes items "such as artificial larynxes, signaling devices, amplified handset, hands-free telephones, text telephones, memory telephones, direct telephone dialing device, braille text telephones, captioned telephone, and other devices which provide access to telephone networks for people with a hearing, speech, vision, mobility or cognitive disability." *Id.*

Petition of the State 911 Dep't for Approval of Request for Response to Procure Telecomms.

Relay Serv. & Captioned Tel. Relay Serv., D.T.C. 12-8, *Order* (Dec. 20, 2012); *Petition* at 24.

The projected \$2,500,000 in TRS expenses and 1,000,000 in CapTel expenses are based on this contract. *See* *Petition* at 24, Exh. A. For SCPE, the 911 Department contracts with various equipment vendors to provide such equipment to persons with disabilities. *Id.* at 23-24. The 911 Department's projected SCPE expenses in FY2015 are based on these contracts with SCPE vendors. *Id.*

The DTC determines that although the 911 Department's projected disability access program expenditures represent an increase in such spending over FY2014, the projected expenses are, or will be, prudently incurred. The majority of these expenses are based on a DTC-approved contract, and all of the expenses are necessary for the provisioning of disability access programs in accordance with the 911 Department's statutory mandate. *See* G.L. c. 6A, §§ 18B(m), 18H(d); G.L. c. 166, § 15E. In addition, the DTC notes that the projected expenditures still represent a decrease from the 911 Department's spending on such programs in recent years. *See Petition of the State 911 Dep't for Approval of Fiscal Year 2012 Expenditures*, D.T.C. 12-3, *Order* at 14 (May 30, 2012); *11-2 Order* at 22.

e. Conclusion

The DTC determines that the 911 Department's projected FY2015 expenditures are reasonable and are, or will be, prudently incurred. Accordingly, the DTC approves the expenditures under G.L. c. 6A, § 18H(b) and (c).¹⁹

2. State 911 Department Projected FY2016 and FY2017 Expenditures

¹⁹

For a discussion of the stability of the surcharge, see *infra* Section II.D.

The 911 Department projects expenditures of \$118,336,402 in FY2016 and \$92,214,025 in FY2017. Petition at Exh. B. As these projected expenditures will not exceed expenditures from the previous fiscal years, the 911 Department is not required to, and does not seek DTC approval of such expenditures under G.L. c. 6A, § 18H(c). *See* G.L. c. 6A, § 18H(c). However, given that the 911 Department requested approval of adjustments to the surcharge for FY2016 and FY2017, the DTC must review the prudence of these expenditures under G.L. c. 6A, § 18H(b). *See id.* § 18H(b). As discussed below, the 911 Department's projected expenditures for FY2016 and FY2017 represent a significant decrease from its projected FY2015 expenditures. *See* Petition at Exh. B. While most categories of expenses project level funding from FY2015 through FY2017, the projected decrease in expenditures is attributable to the completion of the deployment of NG 911. *See id.* The DTC finds that the 911 Department's projected FY2016 and FY2017 expenditures are necessary to the provisioning of E911 services and programs, including disability access programs, and thus will be prudently incurred.

a. Administration

As discussed above, the 911 Department's administration expenses are broken down into the following categories: salary costs, agency expenses, and, in FY2016, capital projects. *See supra* Section II.C.1.a; Petition at Exh. B. The 911 Department projects a slight increase from FY2015 in salary costs and agency expenses, as well as new capital project expenses. *See* Petition at Exh. B.

The projected FY2016 and FY2017 increases in salary costs are due to contractual step increases and cost of living requirements negotiated by NAGE and the Commonwealth. *See id.*

at 9-10, Exh. B. Accordingly, as discussed above, the DTC finds that these increases are contractual and will be prudently incurred. *See supra* Section II.C.1.a.

The projected increase in agency expenses as well as the new capital project expenses in FY2016 is due to a relocation of the 911 Department's main offices. *See* Petition at 10-11, Exh. B. The 911 Department's lease at its current office location expires in January 2017 and is unable to be renewed because the property has been sold. *Id.* at 10; Tr. at 56, 57. The 911 Department is working with the Massachusetts Division of Capital Asset Management and Maintenance ("DCAMM") to secure a new location for its offices. Petition at 10-11; Tr. at 56. The projected increase in the 911 Department's FY2016 agency expenses represents an estimate of the costs of rent and utilities at the 911 Department's new office location. Petition at 10-11; Tr. at 56. In addition, the projected capital project expenses in FY2016 represent an estimate of the relocation and renovation costs as a result of moving to the new location. Petition at 10-11; Tr. at 56. The DTC finds that these projected costs associated with moving the 911 Department's offices will be prudently incurred. Agency expenses are then expected to remain static in FY2017, and there are no projected capital project expenditures in FY2017. Petition at Exh. B.

For the reasons set forth above, the DTC determines that the 911 Department's projected administration expenses in FY2016 and FY2017 will be prudently incurred. *See supra* Section II.C.1.a.

b. Programs

The 911 Department anticipates level funding of its programs from FY2015 through FY2017. *See* Petition at Exh. B. The one exception is the Incentive Grant for regional PSAPs

serving ten or more municipalities, for which the 911 Department projects an increase of about 85%, to \$1,085,604 in FY2016. *See id.* The 911 Department then expects this grant's funding to stabilize in FY2017. *See id.* Expenditures for the other programs are projected to remain stable through FY2017, and the State 911 Commission has approved reductions in the programs' allocation amounts to maintain that stability. *See id.; supra* pp. 18-19.

Despite a significant increase in projected FY2016 funding for the Incentive Grant for regional PSAPs serving ten or more municipalities, the projected expense meets the statutorily prescribed allocation. *See* G.L. c. 6A, § 18B(i)(4). Legislation set the initial allocation of this grant to 1.5% of the total surcharge revenues of the previous fiscal year. *Id.* The 911 Department's projected FY2016 expenditures for this grant reflect exactly that allocation amount—1.5% of the projected surcharge revenues of FY2015. *See* Petition at Exh. A, Exh. B. The reason for the projected increase in FY2016 expenses of the Incentive Grant for regional PSAPs serving ten or more municipalities is that the projected FY2015 allocation to this grant is 0.79%, lower than the allocation prescribed by statute. *See* G.L. c. 6A, § 18B(i)(4); Petition at Exh. A, Exh. B. Accordingly, as the projected FY2016 expenditures for the Incentive Grant for regional PSAPs serving ten or more municipalities equals the amount prescribed by statute, the DTC determines that the expenses will be prudently incurred. *See* G.L. c. 6A, § 18B(i)(4). Additionally, as the funding for the 911 Department's other programs is projected to remain constant in FY2016 and FY2017, the DTC determines that the 911 Department's projected FY2016 and FY2017 programs expenditures will be prudently incurred. *See supra* Section II.C.1.b.

c. Enhanced 911

The 911 Department projects E911 expenditures to decrease from \$72,645,528 in FY2015 to \$58,905,035 in FY2016 and to \$30,327,268 in FY2017. *See* Petition at Exh. B. Specifically, expenditures for E911 support and NG 911 non-recurring costs, including the NG 911 consultant, are projected to decrease significantly from FY2015 to FY2017, while NG 911 recurring costs are expected to increase significantly during the same time period. *Id.* Map data expenditures are projected to remain relatively constant through these years. *Id.* The DTC finds that these projected costs will be prudently incurred.

As discussed in full above, the 911 Department's deployment of NG 911 is a massive undertaking and the new system is scheduled to be fully operational by the end of FY2016. *See id.* at 20; *supra* Section II.C.1.c. While the bulk of non-recurring expenses associated with the deployment of NG 911 are projected to be recorded in FY2015, there remain in FY2016 many non-recurring projected expenses necessary to complete the deployment. *See* Petition at Exh. B; Tr. at 97; EOPSS Letter. These expenses will be incurred pursuant to the 911 Department's contract with GDIT. *See* Petition at 20, 22; Tr. at 103. In addition, the 911 Department projects non-recurring NG 911 expenditures in FY2017, albeit significantly decreased, for monitoring the rollout of NG 911 and addressing any issues that arise after the system becomes fully operational. *See* Petition at Exh. B; D.T.C. IR-3; D.T.C. IR 1-6; Tr. at 111; *cf.* Tr. at 54-55. The DTC finds that these projected non-recurring NG 911 expenditures are contractual and are necessary to achieve the 911 Department's statutorily mandated goal of establishing NG 911. *See* G.L. c. 6A, § 18B(h).

While non-recurring NG 911 costs are projected to decrease, recurring NG 911 costs are projected to increase in FY2016 and FY2017 as the 911 Department begins to operate and

maintain a fully functional NG 911 system under its contract with GDIT. *See* Petition at 20, 22, Exh. B. These projected cost increases, however, coincide with significant projected decreases in E911 support expenses related to maintenance of the 911 Department's current, analog 911 system. *See id.* at 20, Exh. B; Tr. at 97. The 911 Department states that the current 911 system will be phased out once NG 911 is deployed. Petition at 18. In fact, the 911 Department's contract with Verizon for E911 support will expire on October 31, 2016, and the 911 Department does not project any expenditure for E911 support in FY2017. Petition at 20 n.11, Exh. B; *see also* MMA Letter; MCPA Letter. Recurring NG 911 expenditures and E911 support expenditures are thus similar, except that they reflect maintenance costs for different 911 systems. As recurring NG 911 costs increase, E911 support costs decrease. *See id.* at Exh. B. And the cost categories overlap in FY2015 and FY2016 because of the necessity that the 911 Department operate and maintain two 911 systems in parallel. *See id.* at 24; Tr. at 97; EOPSS Letter. Recurring NG 911 costs then begin to stabilize in FY2017 as E911 support expenditures end. *See* Petition at Exh. B. The DTC finds that the 911 Department's projected FY2016 and FY2017 recurring NG 911 and E911 support expenditures are necessary for the 911 Department's provision of E911 services and programs, including disability access programs as the 911 Department continues the migration to NG 911.

As a result of the foregoing, as well as the reasons set forth in section II.C.1.c, the DTC finds that the 911 Department's projected FY2016 and FY2017 E911 expenditures are necessary to achieve the 911 Department's statutorily mandated goal of establishing NG 911, while at the same time maintaining the functionality of the current 911 system until NG 911 is fully

operational. Accordingly, the DTC finds that these projected expenses will be prudently incurred.

d. Disability Access Programs

The 911 Department projects level funding of its disability access programs from FY2015 through FY2017. Petition at Exh. B. The DTC determines that the 911 Department's projected expenditures on disability access programs in FY2016 and FY2017 will be prudently incurred. *See supra* Section II.C.1.d.

e. Conclusion

The DTC determines that the 911 Department's projected FY2016 and FY2017 expenditures are reasonable and will be prudently incurred. *See* G.L. c. 6A, § 18H(b).²⁰

D. Adjustments to the Enhanced 911 Surcharge

The 911 Department requests an adjustment of the surcharge to \$1.25 effective July 1, 2015, with a further adjustment to \$1.00, effective July 1, 2016, to provide for expenses associated with 911 services. Petition at 1. On July 31, 2008, the Massachusetts General Court established a surcharge of \$0.75 on each subscriber or end user whose communication services are capable of accessing and utilizing an E911 system. 2008 Mass. Acts, c. 223 (codified at G.L. c. 6A, § 18H(a)). The surcharge has remained constant since then, but the 911 Department states that it will not be able to meet its statutory mandates absent an increase to the surcharge in FY2016. Petition at 2. Given the DTC's determination above that the 911 Department's revenue and expenditure projections are reasonable and that the projected expenditures are, or will be, prudently incurred in FY2015, FY2016, and FY2017, the DTC grants the 911

²⁰ For a discussion of the stability of the surcharge, see *infra* Section II.D.

Department's requested adjustments to the surcharge for FY2016 and FY2017. However, given the extraordinary uncertainty reflected in the record with respect to the 911 Department's revenue and expenditures after NG 911 is fully deployed and implemented, the DTC believes a review of the surcharge in FY2018 would be prudent. *See infra* Section II.E.

1. Adjustment to \$1.25

Over the past several years, the Fund has amassed a surplus in anticipation of the implementation of NG 911. *See* Petition at Exh. A. The Fund's ending balance was \$73,318,472 in FY2013 and \$79,383,923 in FY2014. *Id.* However, the Fund's FY2015 ending balance is projected to be \$8,098,495 given a \$0.75 surcharge. *Id.* The 911 Department states that its projected FY2016 expenditures will then exceed its FY2016 revenues absent the requested adjustment to the surcharge. Tr. at 112; D.T.C. RR 1-9. In fact, if the surcharge is not adjusted, the 911 Department's projections indicate that it would be forced to operate with a deficit during most, if not all of FY2016.²¹ Indeed, the 911 Department states that it will not be able to meet its statutory mandates absent the requested adjustment to the surcharge. *See, e.g.,* Petition at 2. In contrast, with a surcharge of \$1.25 during FY2016, the 911 Department projects a FY2016 ending balance of \$6,364,009. *Id.* at Exh. B.

While surcharge stability is desirable, that does not mean that the surcharge must remain at \$0.75 in perpetuity. When evaluating the level of surcharge, the DTC must weigh the reasonableness of the 911 Department's proposed expenditures with the interests of telecommunications consumers and public safety. *See, e.g., 11-2 Order* at 4-5; MCCA Letter. Indeed, the statute expressly envisions adjustments to the surcharge to fund prudently incurred

²¹ Given the 911 Department's subscriber count and expenditure projections, the Fund's balance at the end of FY2016 would be a deficit of approximately \$38 million. *See* Petition at 8-9, Exh. B.

expenditures. *See* G.L. c. 6A, § 18H(b). Given the 911 Department's projected expenditures related to the deployment and implementation of NG 911, including the 911 Department's maintenance of two separate 911 systems, the DTC finds that adjustment of the surcharge from \$0.75 to \$1.25 for a one year period is necessary. Specifically, given the prudence of the 911 Department's projected FY2015 and FY2016 expenditures as determined above, the DTC finds that an adjustment of the surcharge to \$1.25, effective July 1, 2015, is sufficient and necessary for the funding of the 911 Department's provision of E911 services and programs, including disability access programs in FY2016.²² *See* G.L. c. 6A, § 18H(a)-(b); 07-7 Order at 9; *supra* Section II.C.1-2.

2. Adjustment to \$1.00

With a \$1.25 surcharge in FY2016, the 911 Department projects an ending Fund balance of \$6,364,009. Petition at Exh. B. The 911 Department then projects significantly decreased expenditures during FY2017. *See id.*; *supra* Section II.C.2. The 911 Department states that a reduction in the surcharge to \$1.00 is sufficient and necessary to fund these projected expenditures. Petition at 2; *see also* Tr. at 109-111. The 911 Department states that it ran "a number of different projections" before determining that a \$1.00 surcharge is necessary to cover its projected expenditures. Tr. at 109. The 911 Department confirmed that if the surcharge were reduced—for example, back to \$0.75—the 911 Department would be forced to operate at a deficit during FY2017.²³ *Id.* at 110-11. *But see* CTIA Comments at 10 (requesting that the DTC

²² As a result of the Interim Order, there will be no further adjustment to the surcharge for FY2016. *See* Interim Order at 11.

²³ Given the 911 Department's subscriber count and expenditure projections, the Fund's balance at the end of FY2017 would be a deficit of approximately \$13 million with a surcharge of \$1.25 in FY2016 and \$0.75 in FY2017. *See* Petition at 8-9, Exh. B.

revert the surcharge to \$0.75 in FY2016). With a surcharge of \$1.00, however, the 911 Department projects a FY2017 ending balance of \$12,658,500. Petition at Exh. B. The 911 Department states that such a surplus is necessary for unexpected costs that may arise during early implementation of a fully operational NG 911. D.T.C. IR 1-3; D.T.C. IR 1-6; Tr. at 54, 109-111. *But see* CTIA Comments at 10 (arguing that the projected approximately \$6 million surplus has not been justified).

The DTC determines that as the 911 Department's projected expenditures decrease, a decrease in the surcharge is also necessary. Indeed, if the surcharge remained at \$1.25, the 911 Department would end FY2017 with a surplus of approximately \$30 million, which the 911 Department implicitly recognizes is unnecessary at this time. *See* Petition at 1-2; Tr. at 109-110 (acknowledging with its Petition that a reduction from \$1.25 to \$1.00 is reasonable). As noted above, while the DTC strives for surcharge stability, a fluctuation of the surcharge is necessary in this case given the one-time costs related to deploying and implementing NG 911. *See supra* Section II.D.1. Moreover, a reduction in the surcharge will be beneficial to communications service ratepayers. *See 11-2 Order* at 4-5. The DTC acknowledges CTIA's concerns, but finds that a limited surplus is appropriate given the potential for unexpected costs related to the implementation of NG 911. *See* 220 C.M.R. § 16.04(4); CTIA Comments at 11. The DTC also notes that such surplus does not expire if left unused, but will be incorporated into future surcharge assessments. *See* 220 C.M.R. § 16.04(4); CTIA Comments at 11; *infra* Section II.E.

Given the prudence of the 911 Department's projected FY2016 and FY2107 expenditures as determined above, the DTC finds that an adjustment of the surcharge to \$1.00, effective July 1, 2016, is sufficient and necessary for the funding of the 911 Department's provision of E911

services and programs, including disability access programs in FY2017. *See* G.L. c. 6A, § 18H(a)-(b); 07-7 *Order* at 9.

E. Stability of the Enhanced 911 Surcharge and Condition of the Fund

Having addressed the 911 Department's projected revenues and expenditures and approved two adjustments to the surcharge, the DTC next looks to the condition of the Fund and the long-term prospects for stability of the surcharge. After collection of the \$1.25 surcharge in FY2016, the Fund is projected to end FY2016 with a balance of \$6,364,009. *See* Petition at Exh. B. The 911 Department then projects—with a \$1.00 surcharge—the ending balance of the Fund to increase by almost \$7 million per year, ending with a balance of \$26,712,452 in FY2019. *See id.*; CTIA Comments at 5-6.

The 911 Department is entitled to carry a Fund surplus. 220 C.M.R. § 16.04(4). However, while a sizeable surplus has been prudent in recent years given the impending implementation of NG 911, such a large surplus may not necessarily be prudent once NG 911 is fully deployed and implemented. *See* CTIA Comments at 5, 10 (arguing that the DTC should require additional information from the 911 Department to justify a surcharge of \$1.00 in the long-term). Moreover, the record indicates significant uncertainty regarding the 911 Department's expenditures after NG 911 is fully deployed and implemented. *See* Petition at 9 (stating that the hiring of three contract employees is for support of training associated with the implementation of NG 911); Petition at 11 (describing the hiring of *temporary* staff and stating that certain IT expenses “may decrease once [NG 911] has been deployed”); D.T.C. IR 1-3 (indicating that expenditures on consulting services “may decrease once [NG 911] has been deployed”); D.T.C. IR 1-6 (reiterating that IT expenses “may decrease once [NG 911] has been

deployed”); Tr. at 54-55 (“We can certainly look at whether those [operational] services are necessary, and but at this point we’re not willing to make that call [because] there could be things [that] are needed for these services after [NG 911] gets in place.”); Tr. at 74 (stating that after the implementation of NG 911, the 911 Department will review its expenditures for IT services, but that the 911 Department is “not ready to make that call at this point”); Tr. at 87-89 (confirming that as more PSAPs regionalize, a decrease in PSAP-related grant expenditures could result); Tr. at 104-05 (indicating that the 911 Department would be open to reviewing the sufficiency and necessity of a \$1.00 surcharge in the future); CTIA Comments at 6 & n.6., 10-11. 911 Department FY2018 and FY2019 revenues are also difficult to predict this far in advance, particularly subscriber counts in a dynamic communication service market. *See* Tr. at 44-45 (discussing the possibility that with NG 911 new types of communication service providers will bring additional revenue streams); CTIA Comments at 7-9; CTIA RR 1-1.

The DTC strives for surcharge stability, but only to the extent that the surcharge sufficiently covers prudently incurred 911 Department expenditures. *See* G.L. c. 6A, § 18H(a). As discussed above, the deployment and implementation of NG 911, including the maintenance and operation of two 911 systems for a brief time, constitutes a substantial, one-time cost to the 911 Department. Once NG 911 is deployed, the 911 Department’s projected expenditures begin to decrease, but it is unclear at this time by how much. Given this uncertainty, the DTC is not in a position to make a determination at this time as to the prudence of the 911 Department’s expenditures after NG 911 is fully deployed, and most or all of the potential issues with its implementation have arisen and been handled. *See* Tr. at 109-110; *11-2 Order* at 24-25 (indicating that uncertainty in cost projections makes it difficult to forecast the stability of the

Fund in the long-term). Accordingly, the DTC encourages the 911 Department to file a petition for review of the surcharge in calendar year 2017 to affirm the health of the Fund and the sufficiency of the surcharge. The DTC appreciates the 911 Department's commitment to the maintenance of a stable surcharge and the 911 Department's efforts to request a surcharge adjustment that provides sufficient funding while protecting ratepayers. However, given the uncertainties that inevitably accompany any project with the scope of the 911 Department's NG 911 deployment, the DTC is unable, at this time, to confidently adjudge the reasonableness of the surcharge beyond FY2018. Accordingly, if the DTC has not had the opportunity to review the health of the Fund by the end of calendar year 2017, it would be prudent for the DTC to use its statutory authority to review the reasonableness of the surcharge at that time. *See* G.L. c. 6A, § 18H(b).

III. ORDER

Accordingly, after hearing, notice, and due consideration, it is:

ORDERED: That the 911 Department's proposed adjustments to the Enhanced 911 Surcharge for FY2016 and FY2017 are APPROVED; and it is

FURTHER ORDERED: That the 911 Department's proposed FY2015 expenditures are APPROVED; and it is

FURTHER ORDERED: That the 911 Department's proposed adjustment to the Incentive Grant, RECC category allocation amount for FY2015 is APPROVED; and it is

FURTHER ORDERED: That the 911 Department shall comply with its statutory annual reporting obligation under G.L. c. 6A, § 18H(b) in a timely manner moving forward, beginning with FY2016; and it is

FURTHER ORDERED: That the Petition satisfies, subject to the ordering clause above, for FY2013, FY2014, and FY2015 the requirement of G.L. c. 6A, § 18H(b) that the 911 Department file an annual report on the financial condition of the Enhanced 911 Fund.

By Order of the DTC,



Karen Charles Peterson
Commissioner

RIGHT OF APPEAL

Pursuant to G.L. c. 25, § 5 and G.L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court for the County of Suffolk by filing a copy thereof with the Clerk of said Court.